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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

NOUSHIN STAN,

Plaintiff and Appellant,

v.

JOSEPH STAN et al.,

Defendants and Respondents.

B255896 c/w B259709

(Los Angeles County
Super. Ct. No. SC119483)

APPEAL from a judgment of the Superior Court of
Los Angeles County, William F. Fahey, Judge. Affirmed.

Law Offices of Shahrokh Mokhtarzadeh and Shahrokh
Mokhtarzadeh for Plaintiff and Appellant.

Explica Law Group and Manuel J. Diaz for Defendants and
Respondents Joseph Stan, Michael Hayavi, Kevin Hayavi, and
Whitestone Investments LLC.

Law Offices of Cherif Elsheikh and Cherif M. Elsheikh for
Defendant and Respondent Joseph Stan.

Plaintiff and appellant Noushin Stan was married to defendant and respondent Joseph Stan.¹ Noushin filed dissolution proceedings in the family court (the dissolution action). She later filed a separate civil action, which alleged causes of action relating to a community property asset, Whitestone Investments LLC. She named defendants and appellants Michael and Kevin Hayavi and Whitestone (collectively, the Whitestone defendants) and Joseph in the civil action. The family court in the dissolution action issued a judgment awarding Whitestone to Joseph as his sole and separate property. Because Noushin no longer had an ownership interest in Whitestone, the trial court in the civil action dissolved a preliminary injunction that had been issued freezing Whitestone's accounts. The trial court also sustained defendants' demurrers without leave to amend. Noushin now appeals. We affirm the order dissolving the injunction and otherwise affirm the judgment.

BACKGROUND

In 2011, Noushin and Joseph commenced the dissolution action.² In May 2012, they entered into the "Deal Memo," under which Noushin's community property interest in Whitestone, a company that owned a medical office building, would be assigned to Joseph as his sole and separate property. Joseph also agreed to pay certain sums of money to Noushin.

¹ We refer to the parties by their first name to avoid confusion. (*In re Marriage of Smith* (1990) 225 Cal.App.3d 469, 475, fn. 1.)

² *In re Marriage of Stan* (Super. Ct. L.A. County, 2013, No. BD551949).

While the dissolution action was pending in family court, Noushin, in December 2012, filed the civil action. It alleged that Whitestone was being mismanaged and that the Whitestone defendants³ and Joseph breached their fiduciary duties in connection with that company and property.⁴ The trial court (Judge Norman P. Tarle) issued a preliminary injunction in April 2013 prohibiting defendants from making withdrawals from Whitestone's accounts without Noushin's signature. Judge Tarle, however, noted that the family court was considering the Deal Memo, and if "the Deal Memo is in fact approved in the family law case, any party may seek a modification of this injunctive order." That "approval" occurred when the family court entered judgment in the dissolution action on March 6, 2014. The judgment adopted the Deal Memo and, according to that document's terms, awarded Whitestone to Joseph.⁵

³ The Hayavis apparently have an interest in Nicole Properties, LLC, which is a member of Whitestone.

⁴ The civil action alleged causes of action for accounting, injunction, declaratory relief, conversion, breach of fiduciary duty, breach of contract, constructive fraud, and failure to allow inspection of documents under the Corporations Code.

⁵ "The following items are awarded to Joseph as his sole and separate property and Noushin shall execute all quitclaim deeds and/or any other necessary documents needed to effectuate a transfer: [¶] . . . [¶] the entire interest in the business entity known as Whitestone, LLC (which shall include any and all rights to the La Cienega property, tangible and intangible assets, including but not limited to, real property, financial institution accounts, equipment, account receivables, goodwill as well as any and all debts, obligations and encumbrances). Noushin shall sign any and all documents necessary to confirm that she has no

Whitestone now being Joseph's sole property, he moved in the civil action to have the injunction dissolved. Noushin, however, argued that the injunction should remain in place, because Joseph failed to pay her money owed under the dissolution action judgment. Judge Fahey disagreed with that argument and, on April 11, 2014, he dissolved the injunction and ordered "[a]ny and all payments" of Whitestone to be released "without any approval required of" Noushin.

Relying again on the dissolution action judgment, Joseph then demurred to Noushin's complaint in the civil action. On May 12, 2014, Judge Fahey sustained Joseph's demurrer without leave to amend, although he dismissed the moving parties "without prejudice." According to the notice of ruling, the court found that the "action conflicts with the Family Court Jurisdiction." The notice of ruling also stated that the "action is dismissed without prejudice. Plaintiffs are admonished as to the California Code of Civil Procedure Section 128.7 in bringing another action against this Defendant."

Although Judge Fahey had sustained Joseph's demurrer without leave to amend, Noushin filed a first amended complaint (FAC), which again named Joseph as well as the Whitestone defendants.⁶ The FAC maintained that because Joseph breached the terms of the Deal Memo and judgment in the dissolution

interest in or claim upon said entities. Noushin acknowledges that any interest she previously claimed or possessed in said entities is hereby waived and extinguished pursuant to this Deal Memo."

⁶ The FAC also named a new defendant, Jonathan Clarke LLC.

action, Noushin still had an interest in Whitestone. Joseph moved for dismissal with prejudice of the FAC, a pleading he characterized as “drafted with such little regard” for the court’s prior order sustaining his demurrer without leave to amend. The court granted Joseph’s application and again dismissed him “without prejudice” from the FAC.⁷ It is unclear what Judge Fahey intended by dismissing Joseph “without prejudice.” A demurrer is sustained either with leave or without leave. If sustained without leave, it is, necessarily, with prejudice. To the extent Judge Fahey suggested that Noushin could file a motion for leave to bring Joseph back into the action, this contradicts the rationale underlying sustaining a demurrer *without leave to amend*.

The Whitestone defendants separately demurred to the FAC on the grounds that Noushin lacked standing, as she had no ownership interest in Whitestone. Although the Whitestone defendants’ demurrer to the FAC was pending, Noushin, in addition to opposing the demurrer, moved for leave to file a second amended complaint (SAC), which again proposed adding Joseph as a defendant, both individually and in his capacity as trustee of a trust. The proposed SAC alleged that Joseph was making fraudulent conveyances and transferring assets to avoid paying the judgment in the dissolution action.

On September 8, 2014, Judge Fahey sustained without leave to amend the Whitestone defendants’ demurrer and denied with prejudice Noushin’s motion for leave to file the SAC. The

⁷ The record contains a notice of ruling, but not a minute order, from the June 16, 2014 order granting Joseph’s application.

court noted that Noushin “believes that Joseph is in violation of the” judgment and Deal Memo in the dissolution action and that she had a right to maintain the civil action. “Noushin is simply wrong. Noushin’s pending [FAC is] based on the claim – now resolved against her – that as ‘a member of Whitestone’ she has certain civil remedies against Joseph and others. But this Court has advised Noushin’s counsel on several occasions that her claims must be resolved in the family law court.”

Noushin filed two notices of appeal, one from the order dissolving the preliminary injunction and one from the order of dismissal, after the demurrer was sustained without leave to amend and denying Noushin leave to file the SAC.⁸

DISCUSSION

Noushin contends on appeal that the trial court erred, first, by dissolving the preliminary injunction and, second, by sustaining the Whitestone defendants’ demurrer without leave to amend and denying her leave to file the SAC. The premise underlying Noushin’s contentions is she has an ownership interest in Whitestone. As we explain, that premise is incorrect, and her contentions therefore fail.

First, granting, denying or dissolving or refusing to dissolve a preliminary injunction rests in the trial court’s sound discretion. (*Salazar v. Eastin* (1995) 9 Cal.4th 836, 850.) To the extent we are called on to review the court’s factual findings, we do so under the substantial evidence standard of review. (See *Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1505 [applying

⁸ The court’s order of dismissal was entered November 18, 2014. Noushin filed a premature notice of appeal on October 24, 2014. (Cal. Rules of Court, rule 8.104(d)(2); see *Village Nurseries v. Greenbaum* (2002) 101 Cal.App.4th 26, 36.)

substantial evidence review in restraining order context when facts disputed].)

The facts here are undisputed. When the preliminary injunction freezing Whitestone's accounts was issued in April 2013, Noushin had a community property interest in Whitestone. But by the time Joseph moved to dissolve the injunction, Noushin's interest in Whitestone was assigned or transferred to Joseph under the March 2014 dissolution action judgment. Hence, Noushin no longer had any interest in or standing to raise claims concerning Whitestone. To be sure, Noushin may have an interest in receiving payments under the dissolution action judgment, but that interest did not confer standing on her to, for example, demand an accounting of Whitestone's books or to claim a breach of fiduciary duty, when no fiduciary relationship existed vis à vis Noushin and Whitestone and its members. The trial court therefore did not abuse its discretion in dissolving the injunction.

The absence of Noushin's interest in Whitestone causes us to similarly reject her second contention that the trial court erred by sustaining the Whitestone defendants' demurrer without leave to amend and denying leave to amend the proposed SAC. The FAC's and proposed SAC's causes of action were premised on Noushin having an ownership interest in Whitestone and on the judgment in the dissolution action. The pleadings generally alleged, for example, that Noushin is a member of Whitestone (FAC ¶ 17, SAC ¶ 19) and that defendants owed her a fiduciary duty as her "partners" in Whitestone (FAC ¶ 46). But, as we have said, Noushin no longer has an ownership interest in Whitestone. She has no standing to demand, for example, an accounting or inspection of Whitestone's books (first and eighth

causes of action) or injunctive and declaratory relief (second and third causes of action). Our de novo review of the allegations of the pleadings thus shows that Noushin cannot state a cause of action. (See generally *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Noushin also fails to address the other premise underlying the trial court's orders: the family court had priority jurisdiction over the claims. (See generally *Neal v. Superior Court* (2001) 90 Cal.App.4th 22, 26; *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1450 [dissolution court had priority jurisdiction, given "the family law court's broad jurisdictional authority where the right to and disposition of community property are concerned"]; *Askew v. Askew* (1994) 22 Cal.App.4th 942, 962.) In *Neal*, for example, a judgment was issued in the Neals' dissolution action requiring husband to make certain payments to wife. (*Neal*, at p. 23.) Husband failed to pay. Wife and a collection agency tried to collect. Husband filed a separate civil complaint that alleged wife breached the terms of the judgment in the dissolution action. (*Id.* at p. 24.) Wife demurred to the complaint on the ground the family court had jurisdiction over the matter. *Neal* agreed: "A recurrent theme in the family law opinions of this court is the disfavoring of civil actions which are really nothing more than reruns of a family law case. . . . [¶] . . . In substance this case is a family law OSC with civil headings." (*Id.* at pp. 25-26.)

Here too the essence of Noushin's complaint is Joseph failed to comply with the dissolution action judgment. (See, e.g., FAC ¶¶ 24-38, 36 ["Plaintiff is entitled to and is hereby seeking to enforce her rights under the terms of the Judgment"], 103-113 [Joseph failed to comply with the terms and conditions of the judgment].) But any failure of Joseph to comply with that

judgment does not somehow restore Noushin's community property interest in Whitestone.

Noushin responds that Family Code section 1101 authorizes her action. That section provides that a "spouse has a claim against the other spouse for any breach of the fiduciary duty that results in impairment to the claimant spouse's *present undivided one-half interest in the community estate.*" (Fam. Code, § 1101, subd. (a), italics added.) Whitestone no longer is part of the "community estate." It belongs to Joseph as his sole and separate property. Family Code section 1101 is inapplicable.

The demurrers were therefore properly sustained and leave to file the proposed SAC was properly denied.

DISPOSITION

The order dissolving the preliminary injunction is affirmed. The judgment is affirmed. Defendants and respondents may recover their costs on appeal.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.